



100 Meridian Centre
Suite 300
Rochester, NY 14618-3979

Sr. Director - Regulatory Affairs & Contract
Management
Phone: (585) 785-5837
Fax: (585) 785-5838
mnighan@afsnetworks.com

February 25, 2010
Via ECFS

Federal Communications Commission
Attn. Marlene H. Dortch
Office of the Secretary
445 12th. Street, SW
Suite TW-A325
Washington, DC 20554

**Re: CY 2009 Annual CPNI Certification
EB Docket No. 06-36**

Dear Secretary Dortch:

As required by 47 C.F.R. §64.2009(e) **American Fiber Systems, Inc.** hereby submits its annual CPNI Certificate of Compliance and Statement of Operating Procedures for Calendar Year 2009.

Sincerely,

A handwritten signature in black ink that reads "Michael J. Nighan". The signature is fluid and cursive, with the first name "Michael" and last name "Nighan" clearly legible.

Michael J. Nighan
Sr. Director - Regulatory Affairs & Contract Management

Attachment

xc: Best Copy & Printing (FCC@BCPIWEB.COM)

AMERICAN FIBER SYSTEMS, INC.

CY 2009 Annual Statement of CPNI Operating Procedures

Compliance with 47 C.F.R. Section 64.2005 through Section 64.2011

1. During CY 2009 American Fiber Systems, Inc. ("AFS") offered and provided, among other services, Dedicated Private Line services, Internet and High Capacity Data services, the aforementioned services being capable of falling into either the "local" or the "interexchange" categories of service.

AFS did not provide any form of: a) commercial mobile radio service, b) residential service, or c) Interconnected VOIP services. AFS offered and provided its services exclusively to large Enterprise and Carrier customers.

AFS obtained affirmative, express written consent from customers to permit AFS to access CPNI to market to a customer service offerings that were within a category of service to which the customer did not already subscribe, and customers were provided with notice of their ability to withdraw such consent at any time. CPNI was used by AFS exclusively, and was not utilized by affiliates or by third parties, except as set forth in # 2 below

2. Consistent with the Commission's rules, AFS used, disclosed, and permitted access to CPNI, without customer approval, for the purposes of: provisioning inside wiring, installing, maintaining and repairing customer services, and protecting the rights or property of AFS, or protecting the users of AFS services and other carriers from fraudulent, abusive or unlawful use of services.

3. AFS does not allow third parties access to CPNI to market to AFS' existing customer base. AFS does use marketing/lead generation firms to identify potential new customers. However, that analysis is based upon the bandwidth needs of the potential new customers and their proximity to AFS' network footprint.

4. AFS did not market to customers that call and make inquiries concerning their account information. But should the Company choose to do so in the future, it will abide by all applicable rules.

5. None of the services provided by AFS generated call detail records. In order to authenticate a customer's identity prior to disclosing CPNI, AFS authenticated the customer using the following process: Direct customer access to CPNI was available only to the customer contact-of-record. Each AFS customer was required to designate in writing a Customer Contact to act as the sole point of communication between the customer and AFS. AFS did not discuss any aspect of the customer's account with any individual except the designed Customer Contact and even the Customer Contact was required to provide complete customer account information (account number, account address, invoice number, etc.) and reconfirm all Customer Contact

information (name, phone number, e-mail address, etc.) before AFS would discuss CPNI or any aspect of the customer's account. Should any customer account or Customer Contact information be changed AFS notifies the Customer Contact by telephone or e-mail and requests verification that a change was authorized. Lastly, all customers are proactively contacted by AFS on an annual basis to re-confirm all Customer Contact information.

6. AFS has required all employees to sign an "*Employee Nondisclosure, Noncompetition and Assignment Agreement*" (the "Agreement") as a condition of employment or continued employment. Under the terms of the Agreement, AFS employees are prohibited from divulging confidential information of any customer to any individual or entity outside of AFS. This provision is binding upon employees even after their termination of employment. Furthermore, AFS employees are required to devote their full time efforts to the business of AFS and are explicitly prohibited from engaging in any other business activity that would conflict with their duties to AFS. In the event that an employee violates the Agreement AFS may terminate the employee in addition to any other remedies available at law or in equity.

7. Further, AFS has required all employees to sign a "*Business and Work Ethics Policy*" which also prohibits employees from disclosing non-public customer information, including Customer Propriety Network Information.

8. During CY2009 AFS took, and continues to take, reasonable measures to discover and protect against attempts to gain unauthorized access to CPNI:

a) For example, through the use of "firewalls" AFS blocks any unauthorized attempts to gain access to corporate systems. AFS is not aware of any unauthorized attempts to access customers' CPNI. In addition, via encryption of CPNI, AFS further reduced the possibility that usable CPNI data could be accessed illegally.

b) Internal access to CPNI was restricted to company employees on a "need-to-know" basis.

9. No CPNI breaches occurred during CY2009. AFS is aware of and will comply with all requirements of 47 C.F.R. Section 64.2011 to notify the appropriate agencies and, prior to notifying the impacted customer(s) of any security breach involving CPNI, wait the prescribed timeframes. AFS will maintain the appropriate records regarding any breaches, should they occur, for a period of two years.

10. During CY2009 AFS did not take any actions (*i.e.*, proceedings instituted or petitions filed by a company at either state commissions, the court system, or at the Commission) against data brokers) nor did AFS receive any customer complaints relating to the unauthorized release of CPNI.

American Fiber Systems, Inc.

Annual 47 C.F.R. § 64.2009(e) CPNI Certification of Compliance

EB Docket 06-36

Annual 64.2009(e) CPNI Certification for 2010 covering the prior calendar year 2009

1. Date filed: **February 25, 2010**
2. Name of company(s) covered by this certification: **American Fiber Systems, Inc.**
3. Form 499 Filer ID: **821650**
4. Name of signatory: **Bruce T. Frankiewicz**
5. Title of signatory: **General Counsel & Vice President of Regulatory**
6. Certification:

I, Bruce T. Frankiewicz, certify that I am an officer of the company named above, and acting as an agent of the company, that I have personal knowledge that the company has established operating procedures that are adequate to ensure compliance with the Commission's CPNI rules.

Attached to this certification is an accompanying statement explaining how the company's procedures ensure that the company is in compliance with the requirements (including those mandating the adoption of CPNI procedures, training, recordkeeping, and supervisory review) set forth in section 64.2001 *et seq.* of the Commission's rules.

The company has not taken actions (*i.e.*, proceedings instituted or petitions filed by a company at either state commissions, the court system, or at the Commission against data brokers) against data brokers in the past year.

The company has not received customer complaints in the past year concerning the unauthorized release of CPNI

The company represents and warrants that the above certification is consistent with 47. C.F.R. § 1.17 which requires truthful and accurate statements to the Commission. The company also acknowledges that false statements and misrepresentations to the Commission are punishable under Title 18 of the U.S. Code and may subject it to enforcement action.

Signed


[Signature of an officer, as agent of the carrier]